

Douglas E. Dexter (SBN 115868)
Amarra A. Lee (SBN 245679)
FARELLA BRAUN + MARTEL LLP
235 Montgomery Street, 17th Floor
San Francisco, CA 94104
Telephone: (415) 954-4400
Facsimile: (415) 954-4480
E-mail: ddexter@fbm.com
E-mail: alee@fbm.com

Mark A. Knueve (Ohio Bar No. 0067074) Pro Hac Vice Application To Be Filed
Daniel J. Clark (Ohio Bar No. 0075125) Pro Hac Vice Admission Pending
Samantha A. Stilp (Ohio Bar No. 0086907) Pro Hac Vice Admission Pending
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street, P.O. Box 1008
Columbus, OH 43216-1008
Telephone: (614) 464-6387
Facsimile: (614) 719-4808
E-mail: maknueve@vorys.com
E-mail: djclark@vorys.com
E-mail: sastilp@vorys.com

Attorneys for Defendants
ABERCROMBIE & FITCH STORES, INC. dba
HOLLISTER and HOLLISTER CO. CALIFORNIA, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

vs.

ABERCROMBIE & FITCH STORES, INC.
dba HOLLISTER, HOLLISTER CO.
CALIFORNIA, LLC,

Defendants.

Case No. 4:11-cv-03162-PJH

**ANSWER OF DEFENDANTS
ABERCROMBIE & FITCH STORES, INC.
dba HOLLISTER AND HOLLISTER CO.
CALIFORNIA, LLC**

Defendants Abercrombie & Fitch Stores, Inc. (“Abercrombie”) and Hollister Co. California, LLC (“Hollister”), (collectively, “Defendants”), by their undersigned counsel, hereby answer the Complaint of Plaintiff Equal Employment Opportunity Commission (“Plaintiff”) as follows:

ANSWER

1. In answering Paragraph 1 of the Complaint, Defendants admit that this Court has jurisdiction over this matter, but deny that they violated any law whatsoever. Defendants deny the remaining allegations contained in Paragraph 1 of the Complaint.

2. In answering Paragraph 2 of the Complaint, Defendants admit that venue is proper in this Court, but deny that they violated any law whatsoever. Defendants deny the remaining allegations contained in Paragraph 2 of the Complaint.

3. In answering Paragraph 3 of the Complaint, Defendants state that this action is appropriate for assignment to the San Francisco division of this Court, but deny that it violated any law whatsoever. Defendants deny the remaining allegations contained in Paragraph 3 of the Complaint.

4. Defendants admit the allegations contained in Paragraph 4 of the Complaint.

5. In answering Paragraph 5 of the Complaint, Defendant Abercrombie states that it is an Ohio corporation which currently employs at least 15 employees in the state of California. Defendants deny the remaining allegations contained in Paragraph 5 of the Complaint.

6. Defendants admit the allegations contained in Paragraph 6 of the Complaint.

7. Defendants deny the allegations contained in Paragraph 7 of the Complaint.

8. Defendants deny the allegations contained in Paragraph 8 of the Complaint.

9. Defendants deny the allegations contained in Paragraph 9 of the Complaint.

10. In answering Paragraph 10 of the Complaint, Defendants state that Umme Hani Khan (“Khan”) filed a charge of discrimination with the Equal Employment Opportunity Commission. Defendants deny the remaining allegations contained in Paragraph 10 of the Complaint.

11. Defendants deny the allegations contained in Paragraph 11 of the Complaint.

1 12. Defendants deny the allegations contained in Paragraph 12 of the Complaint.
2 13. Defendants deny the allegations contained in Paragraph 13 of the Complaint.
3 14. Defendants deny the allegations contained in Paragraph 14 of the Complaint.
4 15. Defendants deny each and every allegation contained in the Complaint not
5 admitted to be true herein.

6 16. Defendants deny the allegations contained in Plaintiff's prayer for relief and
7 further deny that Plaintiff is entitled to the relief requested or any relief whatsoever.

8 **AFFIRMATIVE DEFENSES**

9 **FIRST DEFENSE**

10 1. Plaintiff's Complaint fails to state a claim upon which relief can be granted.

11 **SECOND DEFENSE**

12 2. Some or all of Plaintiff's claims are barred by the applicable statute of limitations.

13 **THIRD DEFENSE**

14 3. All of Defendants' actions toward Khan were taken in good faith and for
15 legitimate, non-discriminatory and non-retaliatory reasons.

16 **FOURTH DEFENSE**

17 4. Khan has failed to mitigate or minimize her damages, if any.

18 **FIFTH DEFENSE**

19 5. Some or all of Plaintiff's claims are barred by the doctrines of waiver, estoppel,
20 unclean hands, preemption and laches.

21 **SIXTH DEFENSE**

22 6. Plaintiff and Khan failed to exhaust their administrative remedies.

23 **SEVENTH DEFENSE**

24 7. Plaintiff and Khan are not entitled to the remedies requested in the Complaint.

25 **EIGHTH DEFENSE**

26 8. The accommodation sought by Plaintiff in the Complaint constitutes an undue
27 burden on Defendants.
28

NINTH DEFENSE

9. Plaintiff's claims fail, in whole or in part, because Defendants breached no legal duty owed to Khan.

TENTH DEFENSE

10. Some or all of the claims asserted fail because they infringe upon Defendants' right to commercial free speech, under the First Amendment to the United States Constitution.

ELEVENTH DEFENSE

11. Some or all of the claims asserted fail because Khan failed to request an accommodation of her religious beliefs.

TWELFTH DEFENSE

12. Plaintiff failed to mitigate her damages when she declined Defendants' offer to reinstate her.

Defendants expressly reserve the right to amend this Answer to include additional affirmative defenses and/or counterclaims as further investigation and discovery may warrant.

WHEREFORE, Defendants respectfully request that Plaintiff's Complaint be dismissed, with prejudice, and that they be awarded their fees and costs incurred herein, including attorneys' fees, and that Defendants be awarded such other and further relief to which they may be entitled, in equity or in law.

Dated: August 26, 2011

FARELLA BRAUN + MARTEL LLP

By: /s/ Amarra A. Lee
Amarra A. Lee

Attorneys for Defendants
ABERCROMBIE & FITCH STORES, INC.
dba HOLLISTER and HOLLISTER CO.
CALIFORNIA, LLC